

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 1:CR-96-297
v. :
FRANKIE THOMAS :
v. :
FRANKIE THOMAS :

MEMORANDUM AND ORDER

Before the court is a document filed by Frankie Thomas entitled “Motion for a Rectification and Modification of Sentence.” The court will treat this as a motion pursuant to 28 U.S.C. § 2255. A federal criminal defendant’s conviction and sentence are subject to collateral attack in a proceeding before the sentencing court pursuant to 28 U.S.C. § 2255. *United States v. Addonizio*, 442 U.S. 178, 179 (1979); *United States v. Miller*, 197 F.3d 644, 648 n.2 (3d Cir. 1999). The petition will be given preliminary consideration pursuant to Rule 4 of the Rules Governing Section 2254 cases. 28 U.S.C. § 2254.

Petitioner Thomas filed a motion to vacate sentence under 28 U.S.C. § 2255 in September 1998 which was denied by this court. The Third Circuit Court of Appeals declined to issue a certificate of appealability. (See *United States v. Thomas*, 3d Cir., No. 99-3050, August 12, 1999). Thomas subsequently filed a series of applications under 28 U.S.C. § 2244 seeking from the court of appeals the authorization to file a second or successive motion under 28 U.S.C. § 2255, each of which was denied. Thomas then filed a motion pursuant to 28 U.S.C. § 2241 which was dismissed. Thomas has not obtained permission from the court of appeals to file the instant motion. 28 U.S.C. § 2244(b)(3)(A).

In light of the foregoing history, as well as Thomas's failure to obtain permission from the Third Circuit to file the instant motion, **IT IS HEREBY ORDERED THAT:**

- 1) The motion entitled "Motion for a Rectification and Modification of Sentence Deriving From an Amendment . . ." (doc. 121) is deemed to be a motion filed pursuant to 28 U.S.C. § 2255.
- 2) The motion is dismissed with prejudice.
- 3) The court declines to issue a certificate of appealability.
- 4) the Clerk of Court shall close the file.

s/Sylvia H. Rambo

SYLVIA H. RAMBO
United States District Judge

Dated: January 17, 2007.